

SECOND REGULAR SESSION

HOUSE BILL NO. 1399

98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SHUMAKE.

4112H.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 105.716, RSMo, and to enact in lieu thereof two new sections relating to the intervention of the general assembly in certain civil actions, with an emergency clause.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 105.716, RSMo, is repealed and two new sections enacted in lieu thereof, to be known as sections 21.415 and 105.716, to read as follows:

- 21.415. 1. **The speaker of the house of representatives and the president pro tempore of the senate, as duly elected public officials and agents of the state of Missouri, shall jointly have standing to intervene on behalf of the general assembly as an interested party to be heard in any judicial, administrative, or other proceeding, in which the constitutionality of any provision of the Missouri Constitution, statute, rule, regulation, program, or policy is being challenged.**
2. **If the attorney general declines to defend or appeal a ruling regarding a challenged provision of the Missouri Constitution, statute, rule, regulation, program, or policy, or does so in a manner deemed inadequate by the general assembly, then the general assembly shall further have standing to defend the challenged statute or provision alongside the attorney general or in the attorney general's stead. Such standing shall be invoked on behalf of the general assembly by agreement of the speaker of the house of representatives and the president pro tempore of the senate.**
3. **Whether the speaker of the house of representatives and the president pro tempore of the senate on behalf of the general assembly intervene in a judicial proceeding as an interested party, or whether they intervene with standing to defend the law and the**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **Missouri Constitution, the general assembly shall act at all times as an agent of the people**
18 **of Missouri.**

19 **4. If the general assembly acts to intervene in a judicial proceeding under this**
20 **section, the respective committees of the house of representatives and the senate responsible**
21 **for administration and accounts shall jointly approve the hiring of legal counsel to**
22 **represent the general assembly. Any reasonable attorneys' fees, court costs, and related**
23 **legal expenses the general assembly incurs as a result of intervention shall be paid from the**
24 **state legal expense fund under subsection 5 of section 105.716.**

25 **5. Subject to the approval of the president pro tempore and the senate committee**
26 **responsible for administration and accounts or the speaker of the house of representatives**
27 **and the house committee responsible for administration and accounts, respectively, if the**
28 **senate or the house of representatives is named as a party in any civil action or a member**
29 **of the senate or the house of representatives is named as a party in his or her official**
30 **capacity in any civil action, then such body or member shall be authorized to retain private**
31 **legal counsel and any reasonable attorneys' fees, court costs, and related legal expenses the**
32 **body or member incurs as a result of such action shall be paid from the state legal expense**
33 **fund under subsection 5 of section 105.716.**

34 **6. In any legal action undertaken by the general assembly under this section, a**
35 **member of either house may file an amicus brief with any court of competent jurisdiction**
36 **containing his or her objections to the position taken by the general assembly or either**
37 **house thereof, provided that no such amicus brief shall be deemed to represent the official**
38 **position of the general assembly.**

105.716. 1. Any investigation, defense, negotiation, or compromise of any claim
2 covered by sections 105.711 to 105.726 shall be conducted by the attorney general; provided,
3 that in the case of any claim against the department of conservation, the department of
4 transportation or a public institution which awards baccalaureate degrees, or any officer or
5 employee of such department or such institution, any investigation, defense, negotiation, or
6 compromise of any claim covered by sections 105.711 to 105.726 shall be conducted by legal
7 counsel provided by the respective entity against which the claim is made or which employs the
8 person against whom the claim is made. In the case of any payment from the state legal expense
9 fund based upon a claim or judgment against the department of conservation, the department of
10 transportation or any officer or employee thereof, the department so affected shall immediately
11 transfer to the state legal expense fund from the department funds a sum equal to the amount
12 expended from the state legal expense fund on its behalf.

13 2. All persons and entities protected by the state legal expense fund shall cooperate with
14 the attorneys conducting any investigation and preparing any defense under the provisions of

15 sections 105.711 to 105.726 by assisting such attorneys in all respects, including the making of
16 settlements, the securing and giving of evidence, and the attending and obtaining [witness]
17 **witnesses** to attend hearings and trials. Funds in the state legal expense fund shall not be used
18 to pay claims and judgments against those persons and entities who do not cooperate as required
19 by this subsection.

20 3. The provisions of sections 105.711 to 105.726 notwithstanding, the attorney general
21 may investigate, defend, negotiate, or compromise any claim covered by sections 105.711 to
22 105.726 against any public institution which awards baccalaureate degrees whose governing
23 body has declared a state of financial exigency.

24 4. Notwithstanding the provisions of subsection 2 of section 105.711, funds in the state
25 legal expense fund may be expended prior to the payment of any claim or any final judgment to
26 pay costs of defense, including reasonable [attorney's] **attorneys'** fees for retention of legal
27 counsel, when the attorney general determines that a conflict exists or particular expertise is
28 required, and also to pay for related legal expenses including medical examination fees, expert
29 witness fees, court reporter expenses, travel costs and ancillary legal expenses incurred prior to
30 the payment of a claim or any final judgment.

31 **5. Notwithstanding the provisions of subsection 2 of section 105.711, funds in the**
32 **state legal expense fund may be expended to pay for the reasonable attorneys' fees, court**
33 **costs, and related legal expenses incurred by the general assembly or any member thereof**
34 **under section 21.415. Moneys in the state legal expense fund shall also be available for the**
35 **payment of any claim or any amount required by any final judgment, including claims for**
36 **attorneys' fees, rendered by a court of competent jurisdiction against the general assembly**
37 **or any member thereof if the general assembly or any member thereof is a party to the**
38 **proceeding under section 21.415.**

Section B. Because of the need to have a vigorous defense of the validity of Missouri
2 law, section A of this act is deemed necessary for the immediate preservation of the public
3 health, welfare, peace and safety, and is hereby declared to be an emergency act within the
4 meaning of the constitution, and section A of this act shall be in full force and effect upon its
5 passage and approval.

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